IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 219 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

GUJARAT STATE CIVIL SUPPLIES CORPORATION LTD.

Versus

STATE OF GUJARAT

Appearance:

MR DEEPAK V PATEL for Petitioner

MR KG SETH for Respondent No. 1

M/S THAKKAR ASSOC. for Respondent No. 2

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 26/04/2001

ORAL JUDGEMENT

#. This Criminal Revision Application is filed under Section 397 of the Code of Criminal Procedure by the original informant challenging the judgment and acquittal order dated 28.2.1997 recorded by the Learned Judicial

Magistrate First Class, Dhrol in Criminal Case No.170/94 under which the Learned Magistrate recorded an order of acquittal of the 2nd respondent for the offence punishable under Sections 272 and 409 of the Indian Penal Code.

#. The prosecution was conducted against the 2nd respondent for the aforesaid offences on an allegation, that a charge-sheet was filed against the 2nd respondent on 19.5.1994 for the said offences. It was alleged against the 2nd respondent that the 2nd respondent was working as Incharge Godown Manager at Jodia under orders of present petitioner. It was noticed that there was some adulteration in the stock of wheat and some dust and sand were added to it. Inquiry was made and after conclusion of the inquiry, FIR was filed and after the conclusion of the investigation, charge-sheet was filed against the 2nd respondent for the aforesaid offences. Charge was framed and read over to 2nd respondent, to which 2nd respondent pleaded not guilty and therefore the evidence was recorded. At the end of the trial, the Learned Magistrate found that the charge was not proved against the 2nd respondent beyond reasonable doubt and therefore the Learned Magistrate was pleased to extend benefit of doubt to the 2nd respondent and consequently the 2nd respondent was acquitted from the aforesaid charge.

#. Feeling aggrieved by the said judgment and order of the Learned Magistrate the petitioner has preferred this Revision Application before this Court. It has been contended here that the Learned Magistrate has committed illegality in extending the benefit of doubt though there was sufficient evidence on record to punish the contesting respondent for the charge in question. Therefore, the judgment and order of acquittal of trial court are illegal and erroneous and deserve to be set aside. The petitioner has, therefore, prayed that the present Revision Application be allowed and judgment and order of the Trial Court be set aside and contesting respondent be convicted for the aforesaid offences and be sentenced accordingly.

#. Rule was issued and Mr.K.G.Seth, Learned Additional Public Prosecutor, appears for the State, respondent no.1, M/s.Thakkar Associates appear for respondent no.2 - the original accused. I have heard the Learned advocate for the parties and I have perused the papers.

#. At the beginning of the argument a question has arisen as to whether this court exercising revisional

jurisdiction can alter the finding of acquittal and convict the contesting respondent for the offences in question.

#. In this connection, it would be worth while to refer to the provision made in Sub-Sec. (3) of Section-401 of the said Code. It can be reproduced as follows:-

"(3) Nothing in this section shall be deemed to authorise a High Court to convert a finding of acquittal into one of conviction."

#. From the bare reading of the aforesaid provision, it is amply clear that while exercising the powers of revision this Court, cannot convert a finding of acquittal into one of conviction. In other words, when a person has been acquitted by a criminal court and when a Revision Application has been filed in order to challenge the said order of acquittal, then this Court exercising revisional jurisdiction under Section 397 read with 401 of the Code cannot alter the finding into conviction. In other words, this Court cannot convict an accused person who has already been acquitted by a competent criminal court.

#. No other prayer has been made and no other ground has been agitated.

#. In view of above position, I am of the opinion that the Revision Application fails on the aforesaid technical ground. It is not the case of the present petitioner that some evidence has been left out or omitted from consideration. It is also not the case of the petitioner that some inadmissible evidence was illegally considered by the trial court. No witness is shown to have been dropped out. It is also not the case of the petitioner that there were some witnesses cited in the charge-sheet and yet they were not examined by the trial court. It is also not the case of the petitioner that a reasonable opportunity was not afforded to the prosecution to prove the case.

##. In this view of the matter, the present Revision Application is meritless, since technically this Court cannot convict the accused person already acquitted by the trial court in view of the embargo found in Sub-Section 3 of Section 401 of the said Code.

##. In aforesaid view of the matter and for the foregoing reasons, this Revision Application is

dismissed. Rule is discharged.

(D. P.BUCH,J.)

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